

**DEPARTMENT OF INSURANCE, FINANCIAL
INSTITUTIONS AND PROFESSIONAL REGISTRATION**

P.O. Box 690, Jefferson City, Mo. 65102-0690

In the Matter of:

HOGAN LAND TITLE COMPANY,

Respondent.

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Case No. 06-0707255C

CONSENT ORDER

W. DALE FINKE, Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration, after reviewing the stipulations set forth herein, hereby issues the following findings of fact, conclusions of law, and order:

Findings of Fact

1. W. Dale Finke is the duly appointed Director (the "Director") of the Department of Insurance, Financial Institutions and Professional Registration (the "Department of Insurance") whose duties, pursuant to Chapter 375, RSMo, include the supervision and regulation of the business of insurance.

2. The Consumer Affairs Division of the Department of Insurance is authorized by the Director to inquire into all violations of the insurance laws of this state and to inquire into and investigate the business of insurance transacted in this state by any

insurance agent, broker, agency or insurance company, pursuant to §374.190.1 RSMo 2000.

3. The Consumer Affairs Division is authorized by the director to recommend enforcement action for violations of the laws relating to insurance.

4. Respondent, Hogan Land Title Company ("Hogan Title") does business as a title insurance agency and is licensed as such in the State of Missouri (no. AG08026).

5. As an authorized title insurance agency, Hogan Title acts as an agent in the solicitation of, negotiation for and procurement or making of title insurance contracts. It does so by binding coverage, issuing commitments and other documents related to title insurance policies and accepting premium payments for such policies, which insure real property located in the State of Missouri.

6. As an authorized agent of a title insurer, Hogan Title is authorized to transact the title insurance business of the title insurer, which, in conjunction with the issuance of a title insurance policy, includes the handling of escrows, settlements and closings. The handling of escrows, settlements and closings involves the supervision of the actual execution, delivery or recording of transfer and lien documents and for disbursing funds. To perform this business in each of its offices, Hogan Title has employed an individual who is directly responsible for the operations of the office ("manager"), several individuals who coordinate the settlement process including the gathering of information and correspondence with all parties to the real estate transaction ("processors") and several individuals who insure the warranty deeds, deeds of trust, notes, and other documents are properly executed ("closers").

7. The duties of Respondent's closers may include: (1) drafting and issuing title insurance commitments, including preliminary requirements necessary for full coverage to be provided in the subsequent title insurance policy; (2) preparing deeds, sellers' affidavits and lien releases based on the closer's review of the documents yielded by the preliminary title search; (3) performing, or instructing others to perform, a final title search to determine whether any public evidence of defects in title have arisen between the date a commitment was issued and the date of closing; (4) reviewing sellers' affidavits to ensure there are no amounts due and owing for services, labor or material used in the construction or repair of buildings or improvements real property subject to the closing transaction; (5) collecting and scrutinizing deeds, liens, deeds of trust, promissory notes, trust agreements, marital waivers and powers of attorney to determine the legal accuracy, sufficiency and effect of each document in an effort to satisfy all requirements set forth in a title insurance commitment; (6) instructing the title insurance company to modify the exceptions in the title insurance policy, based on the closer's determination of which commitment requirements have been met and which have not; (7) drafting and/or executing HUD-1 forms, tax agreements and certain loan documents required by the lender; (8) explaining the legal effect of each of the foregoing forms and documents to the parties to the transaction, including the coverage and exceptions to coverage to be provided by the title insurance policy, as well as explaining the premiums and fees charged for performing title searches and issuing the title insurance policy; (9) authority to modify the gross amount of premium and fees assessed for performing title insurance searches and issuing the title insurance policy; (10) receiving, depositing, balancing and issuing funds in accord with escrow closing instructions and the HUD-1

form; and (11) ensuring all of the seller's and existing lienholder's interests (to the extent intended by the parties) in the subject real property are extinguished before the title insurance policy is issued.

8. In lieu of seeking an enforcement action for violations of the laws of this state, the Director and Hogan Title desire to settle this matter and consent to the issuance of this order.

Conclusions of Law

9. Title agents must be licensed as insurance producers to sell, solicit or negotiate title insurance. Section 375.014.1, RSMo Cum. Supp. 2005 provides:

No person shall sell, solicit or negotiate insurance in this state for any class or classes of insurance unless he or she is licensed for that line of authority as provided in this chapter.

10. Section 375.018.1 RSMo Cum. Supp. 2005 provides:

.... An insurance producer may qualify for a license in one or more of the following lines of authority:

(8) Any other line of insurance permitted under state laws or regulations.

11. Title insurance is a line of insurance specifically governed by the Missouri Title Insurance Act, Chapter 381, RSMo Cum. Supp. 1999.¹ Section 381.021.2., RSMo 1994 provides:

Except as otherwise expressly provided in sections 381.011 to 381.241, and except where the context otherwise requires, all provisions of the insurance laws of this state applying to insurance and insurance companies generally shall apply to title insurance and title insurance companies. No law of this state enacted after September 28, 1987, that is inconsistent with the provisions of such sections shall be applicable to the business of title

¹ S.B. 894, 90th Gen. Assem., 2nd Reg. Sess. 2000 Mo. Laws 764, was invalidated by the Supreme Court in *Home Builders Association of Greater St. Louis v. State*, 75 S.W.3d 267 (Mo. banc 2002).

insurance unless such law specifically states that it is to be applicable to the business of title insurance.

12. The Missouri Title Insurance Act defines "any authorized agent of a title insurer or representative of the title agent or agency, who acts as title agent in the solicitation of, negotiation for, or procurement or making of any title insurance contract" as a "title agent." § 381.031(17), RSMo 1994 (emphasis added). But this definition must be read in conjunction with § 375.012.2, RSMo Cum. Supp. 2005, which provides:

All statutory references to "insurance agent" or "insurance broker" shall mean insurance producer, as that term is defined pursuant to subsection 1 of this section.

Generally, in light of §375.014.1 RSMo Cum. Supp. 2005, individual title agents in the sale, solicitation or negotiation of title insurance are required to be licensed as individual insurance producers under §375.014.1 RSMo Cum. Supp. 2005.

13. "Negotiate" is defined in §375.012(12), RSMo Cum. Supp. 2005, as the "act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms or conditions of the contract, provided that the person engaged in that act either sells insurance or obtains insurance from insurers for purchasers." Hogan Title's closers are engaged in this activity when explaining the legal effect of each of the forms and documents to the parties to the closing transaction, including the coverage and exceptions to coverage to be provided by the title insurance policy, as well as explaining the premiums and fees charged for performing title searches and issuing the title insurance policy and in those circumstances where they modify the gross amount of premium and fees assessed for performing title insurance searches and issuing the title insurance

policy. In this way, the closers employed by Hogan Title are engaged in negotiating title insurance.

14. However, the Missouri Title Insurance Act states specific exceptions to the general licensure requirement of §375.014.1, RSMo Cum. Supp. 2005 in its definition of title agent in §381.031(17), RSMo 1994:

... The following persons are not title agents or title insurance agents:

- (a) Approved attorneys;
- (b) Salaried officers or employees of title insurers, title agents or title insurance agencies who do not do any of the following:
 - a. Establish premiums for policies of title insurance;
 - b. Determine insurability;
 - c. Issue commitments, policies or other contracts of title insurance.

Under §381.021, RSMo 1994, which resolves variances between the title law and insurance laws of general applicability, the Director has concluded that salaried employees of a title insurer, title agency or title agent do not need an insurance producer license for selling, soliciting or negotiating title insurance unless that employment involves certain enumerated activities, including those who "determine insurability."

15. Some closers of Hogan Title are "determining insurability," as defined by statute. "Determining insurability" in a title insurance transaction may be better described as a process than a single act and may involve a number of different employees with Hogan Title. It is occurring whenever a person drafts or reviews for legal accuracy and sufficiency, any document necessary to insure valid title to the subject real property, including: (1) drafting and issuing title insurance commitments, including preliminary requirements necessary for full coverage to be provided in the subsequent title insurance policy; (2) preparing deeds, sellers' affidavits and lien releases based on the closer's

review of the documents yielded by the preliminary title search; (3) performing, or instructing others to perform, a final title search to determine whether any public evidence of defects in title have arisen between the date a commitment was issued and the date of closing; (4) reviewing sellers' affidavits to ensure there are no amounts due and owing for services, labor or material used in the construction or repair of buildings or improvements real property subject to the closing transaction; (5) collecting and scrutinizing deeds, liens, deeds of trust, promissory notes, trust agreements, marital waivers and powers of attorney to determine the legal accuracy, sufficiency and effect of each document in an effort to satisfy all requirements set forth in a title insurance commitment; (6) instructing the title insurance company to modify the exceptions in the title insurance policy, based on the closer's determination of which commitment requirements have been met and which have not; (7) drafting and/or executing HUD-1 forms, tax agreements and certain loan documents required by the lender; (8) explaining the legal effect of each of the foregoing forms and documents to the parties to the transaction, including the coverage and exceptions to coverage to be provided by the title insurance policy, as well as explaining the premiums and fees charged for performing title searches and issuing the title insurance policy; (9) authority to modify the gross amount of premium and fees assessed for performing title insurance searches and issuing the title insurance policy; (10) receiving, depositing, balancing and issuing funds in accord with escrow closing instructions and the HUD-1 form, including premium; and (11) ensuring all of the seller's and existing lienholder's interests (to the extent intended by the parties) in the subject real property are extinguished before the title insurance policy is issued.

16. Since some the salaried closers at Hogan Title are negotiating title insurance and determining insurability, continued participation by such closers would violate §375.014.1, RSMo Cum. Supp. 2005, subjecting the individuals to multiple actions by the director to enforce the prohibition on unlicensed activity.

17. As to this licensing and related matters, the Director may bring an enforcement action against Hogan Title. Such an action may afford the Director certain remedies, among other relief pursuant to §375.141.3 RSMo Cum. Supp. 2005, such as:

The license of a business entity licensed as an insurance producer may be suspended, revoked, renewal refused or an application may be refused if the director finds that a violation by an individual insurance producer was known or should have been known by one or more of the partners, officers or managers acting on behalf of the business entity and the violation was neither reported to the director nor corrective action taken.

18. Furthermore, the Director may impose orders in the public interest under § 374.046, RSMo 2000. This order is in the interest of the public.

Consent and Agreement

19. Hogan Title waives the right to a hearing to contest any provision of this order and has stipulated and agreed to submit all closers who perform any of the duties described in paragraph 7 for licensure as title insurance producers in the State of Missouri, and agreed to the issuance of this order without further proceedings in this matter, agreeing to be fully bound by the terms and conditions specified herein.

20. Hogan Title has stipulated and agreed to waive any rights that it may have to seek judicial review or other challenge or contest to the terms and conditions of this order and forever releases and holds harmless the Department of Insurance, the Director and his agents from any and all liability and claims arising out of, pertaining to or relating

to this matter.

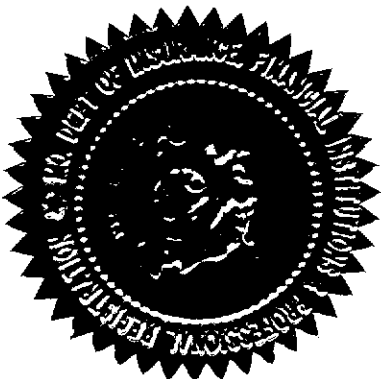
21. The Director is authorized to enforce this order and should Hogan Title fail to comply with the conditions set forth herein, the Director or his successors, without any limitation, may initiate any action authorized by law.


ORDER

IT IS NOW, THEREFORE, ORDERED that, in exchange for the Department's abstention from (i) pursuing disciplinary or regulatory action against Hogan Title, including the imposition of any monetary penalty, relative to the unlicensed activities of its existing and prospective closers and (ii) from denying applications for licensure submitted by existing, unlicensed closers of Hogan Title, Hogan Title shall forthwith, and in no event later than ninety (90) days after the date this order becomes effective, submit for licensure as title insurance producers, all closers who perform any of the duties described in paragraph 7 of this Consent Order and to adopt and implement compliance policies and procedures as reasonably designed to ensure that each closer, both current and prospective, assigned material duties described in paragraph 7 in conjunction with the issuance of title insurance obtains and maintains a title insurance producer license in the State of Missouri.

SO ORDERED, SIGNED AND OFFICIAL SEAL AFFIXED THIS 25th DAY OF

September, 2006.




W. DALE FINKE, Director
Department of Insurance

CONSENT AND WAIVER OF HEARING

The undersigned persons understand and acknowledge that the Respondent has the right to a hearing, but that the Respondent with advice of counsel has waived the hearing and consented to the issuance of this consent order.

Hogan Land Title Company
Respondent

By: Keith Chiff

8/30/06
Date

Consumer Affairs Division
Department of Insurance

By: Jeremy J. Ray
Jeremy J. Ray
Senior Enforcement Counsel
Bar Admission No. 58142
Department of Insurance
301 West High Street, Room 530
Jefferson City, Missouri 65101
(573) 751-1924

9.19.06
Date

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a certified copy of the foregoing document was forwarded by pre-paid first class mail this 26th day of September, 2006, to:

Keith Chaffin
Vice President
1605 East Sunshine
Springfield, Missouri 65804